

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHN JOSEPH OLIVARES §
v. § CIVIL ACTION NO. 6:08cv474
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner John Olivares, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of prison disciplinary action taken against him. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Olivares was convicted of the disciplinary offense of attempting assault another inmate. He asserted that there was no evidence that he had done so, an officer with no personal knowledge of the incident testified at the hearing, the hearing was held in an arbitrary and capricious manner, the hearing officer relied on hearsay, Olivares was found guilty of an offense that he had not been charged with, and prison officials failed to follow their own procedural rules. The Magistrate Judge ordered the Respondent to answer and reviewed copies of state records, including the tape of the hearing. After review of the pleadings and records, the Magistrate Judge issued a Report recommending that the petition be dismissed and that Olivares be denied a certificate of appealability *sua sponte*.

A copy of this Report was sent to Olivares at his last known address, return receipt requested, but no objections ave been filed; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of

plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the John Joseph Olivares is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 13th day of October, 2009.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**